

Chapter 5

School Enrolment and Attendance through Welfare Reform Measure

Background

5.1 The 2007 Little Children are Sacred report highlighted poor school attendance in the NT. The Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse lamented the 'miserable school attendance rates for Aboriginal children' and emphasised that education that addresses the needs of the local community 'provides the path to success'.¹

5.2 In response, in 2009 the Australian government announced the School Enrolment and Attendance through Welfare Reform Measure (SEAM). In order to better encourage school enrolment and attendance, SEAM requires parents or carers, as a condition of their income support payments, to ensure their children are enrolled in and attending school. To be in-scope for SEAM, a person must:

- live in a SEAM location;
- have at least 14 per cent care of a child of compulsory school age; and
- receive or have claimed one of the following income support payments:
 - Age pension;
 - Austudy;
 - Bereavement allowance;
 - Carer Payment;
 - Disability Support Pension;
 - Mature Age Allowance;
 - Mature Age Partner Allowance;
 - Newstart Allowance;
 - Parenting Payment Partnered;
 - Parenting Payment Single;
 - Disability Wage Supplement;
 - Wife Pension;
 - Partner Allowance;

1 NT Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007) 18.

- Sickness Allowance;
- Special Benefit;
- Widow Allowance;
- Widow B Pension; or
- Youth Allowance.

5.3 SEAM offers social work support to help parents overcome barriers to school enrolment and attendance. As a last resort, parents may have their welfare payments suspended or cancelled. SEAM currently operates in specific sites and schools in the NT, including a number of predominantly Indigenous communities.

5.4 SEAM originally commenced in six sites involving 14 schools in the NT. For three years it also applied to a further six sites in Queensland involving 30 schools; however, in 2012 the Queensland Government elected not to proceed with SEAM as it did not consider the model had been effective in that jurisdiction.²

5.5 In 2013, following a three and half year trial, the Australian government allocated \$107.5 million over ten years to implement a revised model of SEAM under the Stronger Futures in the NT budget measure. SEAM is currently operating in 23 NT communities covering 52 schools,³ and is planned to continue until 2022.

5.6 SEAM has two main elements:

- increasing the number of children of compulsory school-age being enrolled in school; and
- identifying children who are enrolled at school but have problems with attendance and putting in place strategies to address these issues.

5.7 Where a child in one of the SEAM communities is not enrolled in school, welfare payments may be suspended if parents fail to provide information about their children's enrolment to the Department of Human Services and do not have a reasonable excuse for doing so.

5.8 Where a child in one of the SEAM communities is not attending school regularly (at least 80 per cent of the time), parents are required to participate in a compulsory conference and agree to enter into a school attendance plan. Where parents fail to attend the conference, enter into a plan, or comply with the agreed

2 Australian National Audit Office, *The Improving School Enrolment and Attendance through Welfare Reform Measure: Department of the Prime Minister and Cabinet, Department of Human Services*, Audit Report No. 51 2013-14, Performance Audit (2014) 27 ('ANAO report').

3 ANAO report 31. Note, SEAM originally started as a pilot but in 2013 funding was provided to continue the measure for ten years as part of the agreement between the Australian and NT governments—the *National Partnership on Stronger Futures in the Northern Territory*.

plan, they may be issued with a formal compliance notice which can lead to the suspension of income support payments.

5.9 The access and provision of social work is recognised as a key feature of SEAM. The suspension or cancellation of income support benefits cannot occur without proper assessment and understanding of family circumstances and before appropriate support is put in place. Social workers are required to contact parents who received an attendance notice within seven business days. Once contact is made, compulsory conferences to develop a school attendance plan, other forms of assistance, referrals to other services, and/or further contact is provided to assist families overcome barriers to attendance and comply with the requirements under SEAM.

5.10 If the parent does not comply within 13 weeks after payment is suspended they may face cancellation of their income support payments. If the parent does comply within 13 weeks the suspension is lifted and back pay is provided. Payments may be suspended more than once.

5.11 There were 2605 parents and 4214 children in-scope for the attendance component of SEAM.⁴ The vast majority of parents and children subject to SEAM are Indigenous—in 2013 the Department of Human Services advised that 98 per cent of parents who attended a compulsory conference had identified as Indigenous.⁵

Findings of the 2013 report on SEAM

5.12 The committee's 2013 report found that SEAM overwhelmingly applies to Aboriginal communities and so engages the right to equality and non-discrimination. The committee also considered that the measures limit the right to social security, the right to an adequate standard of living and the right to privacy.

5.13 The 2013 report considered that the regime pursued the legitimate objective of improving school enrolment and attendance.

5.14 However, it questioned whether the measures were rationally connected to achieving the stated objective as there was debate over whether SEAM had a significant impact on school attendance, and whether the suspension and cancellation of welfare payments was proportionate.

5.15 The committee concluded that the government had not yet clearly demonstrated that:

- to the extent that SEAM may have a differential impact based on race, that it is reasonable and proportionate and therefore not discriminatory; and

4 As at 19 June 2015: Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 2.

5 ANAO report 58.

- that the regime is a justifiable limit on the right to social security, the right to privacy and family, the right to an adequate standard of living and the rights of the child.

5.16 The committee's 2013 report acknowledged that the process of evaluating SEAM was continuing, but that to date it had not clearly demonstrated that SEAM had a significant impact on reducing low school attendance. Therefore the report was not able to conclude that the government had shown that the interference with human rights was justified.

New information post-2013 report

5.17 Since the committee's 2013 report, two substantial evaluations of SEAM have been completed:

- The Australian National Audit Office (ANAO) conducted an independent performance audit of the Department of the Prime Minister and Cabinet (PM&C) and the Department of Human Services in relation to SEAM (ANAO report); and
- The PM&C undertook an evaluation report of the SEAM trial between 2012 and 2014 (PM&C report).

5.18 This report relies on the evaluation conducted by the ANAO and the PM&C and submissions to this committee's present review.

Rights engaged

5.19 It is clear that the level of school attendance in remote areas of Australia is a major concern. As such, improving school enrolment and attendance would contribute to the enhanced enjoyment of the right to education.⁶ However, in addition to seeking to promote this right, the committee considers that imposing conditions on parents in receipt of social security in designated SEAM areas engages and limits the following rights:

- the right to equality and non-discrimination;⁷
- the right to social security;⁸
- the right to an adequate standard of living;⁹
- the right to privacy;¹⁰ and
- the right to culture;¹¹

6 ICESCR, article 13 and CRC, article 28.

7 ICCPR, article 2 and 26; ICESCR, article 2.2; ICERD, articles 1, 2, 4 and 5; CRC, article 2.

8 ICESCR, article 9.

9 ICESCR, article 11.

10 ICCPR, article 17.

Compatibility of the measures with multiple rights

Right to equality and non-discrimination

5.20 The government explains that SEAM is consistent with Australia's obligations of equality and non-discrimination. First, SEAM applies to all people receiving relevant income support payments in a SEAM area, regardless of race. Second, SEAM areas have been designated as such on the basis of a range of non-race-based criteria, 'including very poor school attendance and the likely effectiveness of funding the measure in that area'.¹²

5.21 Nevertheless, the communities chosen for SEAM all have a high proportion of residents who are Indigenous Australians. The former minister sought to explain:

As a key criterion is poor school attendance, this is consistent with evidence that school attendance declines with remoteness, that there is a higher proportion of Indigenous people living in remote communities, and that there is a recognised gap in educational attainment between Indigenous and non-Indigenous Australians.¹³

5.22 The former minister continued:

The Northern Territory has the lowest school attendance rates in Australia. In remote areas of the Northern Territory, school attendance is unacceptably low. The average primary school attendance is 60%, which equates to children missing two school days every week.¹⁴

5.23 The current minister reiterated these comments, explaining that SEAM 'is not an Indigenous-specific measure'.¹⁵

5.24 Even though SEAM is not expressly based on race, it applies overwhelmingly to Aboriginal communities. The current minister noted that while 'data on the percentage of Indigenous parents that are in-scope is not collected...given that SEAM is operational in remote communities in the NT, it is understood that a large

11 ICCPR, article 27; ICESCR, article 15; CRC, article 30.

12 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

13 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

14 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

15 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

percentage of parents in-scope are Indigenous'.¹⁶ As noted above, in 2013, '98 per cent of parents who attended a compulsory conference had identified as Indigenous'.¹⁷

5.25 As described above, indirect discrimination may comprise 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.¹⁸

5.26 In order to be non-discriminatory, such a measure will need to be shown to be based on objective and reasonable grounds and be a proportionate measure in pursuit of a legitimate objective. The analysis conducted under this test is essentially similar to that considered when assessing whether a limitation on a right is permissible.

Right to social security, adequate standard of living and privacy

5.27 SEAM involves an intervention into the family life of persons by requiring a child and parent or carer to adopt particular conduct, subjecting the person to a series of regulatory measures to encourage compliance, and providing for a sanction if the person fails to conform to the conduct stipulated. Insofar as the sanction of suspension or cancellation of income support benefits is concerned, that may also have an impact on the right to family life to the extent that it limits the economic resources that may be available to support members of the family, including family members who have no connection with any failure to take steps to address the unsatisfactory school attendance.

5.28 Limiting the payment of social security benefits when the conditions provided for under the legislation are satisfied will also potentially limit the right to an adequate standard of living as a family subject to suspension or cancellation of benefits will be forced to survive on limited means. Although SEAM 'does not apply to family payments', such as the Family Tax Benefit and Child Care Benefit, or to Carer's Allowance and Mobility Allowance, and these payments 'will continue to be paid during any suspension of income support payments', the loss of income support payments may potentially be quite significant.

5.29 The government states that SEAM is consistent with the right to social security, noting that 'SEAM does not make people ineligible for welfare payments, or reduce the amount paid, but places a condition on the receipt of payment'.¹⁹ However, notwithstanding this, placing a condition on the payment of income

16 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3.

17 ANAO report 58.

18 *Althammer v Austria* HRC 998/01, [10.2].

19 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

support benefits is sufficient to constitute a limitation on the enjoyment of the right to social security.

5.30 Accordingly, it is incumbent on the government to justify the limitation. The government must satisfy the committee that the limitation pursues a legitimate objective, is rationally connected to achieving that objective, and is a reasonably and proportionate means.

Right to culture

5.31 The right to culture is contained in article 15 of the ICESCR, article 27 of the ICCPR and article 30 of the CRC. The right provides that all people have the right to benefit from and take part in cultural life.

5.32 Individuals belonging to minority groups have additional protections to enjoy their own culture, religion and language. The right applies to people who belong to minority groups in a state sharing a common culture, religion and/or language.

5.33 In its 2013 report the committee did not identify the right to culture as engaged by SEAM. However, it is clear that SEAM may inhibit Indigenous children from participating fully and benefiting from their cultural life. Attendance at cultural events, including sorry business, may conflict with conditions imposed on children to attend school.

5.34 Under article 4 of the ICESCR, economic, social and cultural rights may be subject only to such limitations as are determined by law and compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportionate to the achievement of a legitimate objective, and must be the least restrictive alternative where several types of limitations are available.

Legitimate objective

5.35 In its 2013 report, the committee accepted that improved school engagement is a legitimate objective. The committee remains convinced of this view.

5.36 The PM&C report explains that there is evidence that supports the existence of a 'negative cycle' whereby poor school attendance (which is associated with low socioeconomic status, Indigenous status and remoteness) is likely to result in poor education outcomes, which in turn are related to an increased likelihood of welfare dependency and unemployment.²⁰ Improved school enrolment and attendance has the potential to break this cycle.

5.37 In 2012, the former minister informed the committee that the policy objective of SEAM is to 'improve school enrolment and attendance in areas where

20 Department of the Prime Minister and Cabinet, *Improving School Enrolment and Attendance through Welfare Reform Measures (SEAM) Trial (2009-2012): Final Evaluation Report* (May 2014) 2 ('PM&C report').

school attendance and enrolment is very low'.²¹ The former minister explained that the NT has the lowest school attendance rates in Australia, and in remote areas of the Territory, primary school attendance is 'unacceptably low' at 60 per cent.²²

5.38 As the committee noted in its 2013 report, submissions made to the Senate Community Affairs Legislation Committee inquiry into the Stronger Futures Bill generally agreed on the importance of improving access to and the quality of education for Indigenous children in areas where there were low levels of school attendance.²³

Rational connection

5.39 In order to determine whether the measures are rationally connected to the legitimate objective, the committee must assess whether SEAM is effective in achieving the aim of increasing the number of children of compulsory school-age enrolling in, and attending, school.

5.40 A number of submissions to this inquiry indicated their concern that SEAM is not effective in remedying poor school enrolment and attendance. For example, many submissions noted that there is:

...little evidence demonstrating whether the link of welfare payments to truancy is effective in increasing school attendance or for that matter improving education outcomes for aboriginal children in the Northern Territory.²⁴

5.41 In its 2013 report this committee noted that there was debate over whether SEAM has had a significant impact on school enrolment and attendance.²⁵ However, since that report was delivered, two evaluations of the SEAM trial have been conducted: one by the ANAO; and a second by the PM&C.

5.42 These reports paint a mixed picture of SEAM's effectiveness.²⁶ This finding is consistent with the current minister's explanation that SEAM has had a 'minimal to modest impact on reducing unauthorised absences'.²⁷

21 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 5.

22 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

23 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) paragraph [3.136].

24 Aboriginal Peak Organisations Northern Territory, Submission 22, 13. See further: NAAJA, Submission 20, 20; UnitingJustice Australia, Submission 15, 10.

25 2013 report, 67.

26 PM&C report 15.

Enrolment

5.43 The PM&C report found that SEAM was limited in its ability to resolve non-enrolment issues in the trial sites. While parents and children within scope for SEAM generally complied with the requirement of providing enrolment details at a once-a-year verification process, no mechanisms existed 'to ensure that all SEAM-eligible children remained at a school or eligible education alternative throughout the year'.²⁸

5.44 The report found that a sizeable proportion of students' enrolment details were not recorded for the full year. Therefore, although SEAM 'was effective in identifying non-enrolment at a particular point in time' the report noted that 'without a consistent and robust national student data tracking system...SEAM was not the solution/mechanism to resolve non-enrolment'.²⁹

5.45 While acknowledging that the process has improved, the ANAO found that the SEAM enrolment process is too slow:

...if a child was not enrolled for school in term one, the SEAM enrolment process may not take action to encourage their enrolment until a week or two into the second term of the school year. This means that the child may have missed an entire term of school before action is taken.³⁰

5.46 Both reports noted that it was difficult to assess whether SEAM has stimulated an increase in enrolment levels. While approximately 10 per cent of parents had payments temporarily suspended for non-compliance with enrolment requirements, in most cases these payments were promptly restored and no parent had their payment cancelled. According to the ANAO, this is indicative of the fact that 'a significant proportion of the enrolment activity is simply requiring parents who had already enrolled their children to contact the Education Department'.³¹

5.47 The PM&C report reiterated this finding, noting that there is 'qualitative evidence to suggest that some children in the NT may not be identified/captured in income support/schooling records' and that SEAM was not designed to resolve this issue.³²

Attendance

5.48 The PM&C Final Evaluation Report found that the attendance component of SEAM had a mixed impact across government and non-government schools in the NT

27 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3.

28 PM&C report 46.

29 PM&C report 46.

30 ANAO report 17.

31 ANAO report 16.

32 PM&C report 37, 42.

and a modest positive impact across all sites in Queensland. However, it also found that the suspension of income support payments did not generally lead to a lasting reduction in unauthorised absences.

5.49 In relation to government schools in the NT, the report found that the SEAM trial had no statistically significant effect on reducing the rate of unauthorised absences 'for the first year of the trial and over the trial period'.³³ In fact, it appears that SEAM had a negative impact on reducing unauthorised absences. The report assessed SEAM's impact against a comparison group of students. Against this comparison group, the report found that:

...the average rate of unauthorised absences reduced by 3.64 percentage points for SEAM students and by 4.29 percentage points for comparison students in the first year of the trial, compared to the pre-trial period (i.e. 2008). Over the trial period, the average rate of unauthorised absences was *higher* than in 2008 by 1.81 percentage points for SEAM students, but reduced by 0.17 percentage points for comparison students.³⁴

5.50 In contrast, the report found that the SEAM trial had a statistically significant effect on reducing the rate of unauthorised absences among non-government Catholic schools in the NT. However, the SEAM trial did not reduce the overall level of unauthorised absences, which increased among both SEAM students and the comparison group.³⁵

5.51 The report suggests two reasons for SEAM's mixed impact among government and non-government schools: that SEAM was trialled in fewer, more homogenous Catholic schools which were more supportive of SEAM than government schools; and that a higher proportion of Catholic school students who were issued with an attendance notice also received social work support compared to government school students (69.4 per cent to 55.5 per cent).³⁶ This is significant, as the report notes that 'social work appears to be a critical factor in reducing unauthorised absences'.³⁷ As will be examined below, the threat of sanctions also proved decisive.

5.52 However, the report indicates that these figures should be treated with some degree of caution as evidence suggests that the gains made through SEAM may not be sustained.³⁸

33 PM&C report 64.

34 PM&C report 65 (emphasis added).

35 PM&C report 65.

36 PM&C report 80.

37 PM&C report 48.

38 PM&C report 73.

5.53 In contrast to the experience in the NT, in the Queensland trial sites SEAM had a statistically significant impact in reducing unauthorised absences in both Logan and remote sites.

5.54 In Logan, unauthorised absences dropped by 0.25 per cent in the first year of the trial and by 0.37 per cent across the trial period, compared to 2008. This compares favourably to the average rate of unauthorised absences for comparison students, which increased by 0.94 per cent for the first year and 0.54 per cent over the entire trial period.³⁹

5.55 When an attendance notice was issued, indicating an escalation in the process, the rate of unauthorised absences reduced by 1.75 per cent in the first year, and 1.32 per cent over the trial period.⁴⁰ However, reflecting on the significance of the threat effect, in schools which did not issue an attendance notice, the rate of unauthorised absences actually increased for SEAM students, compared to comparison students. As the report explains:

The analysis shows that the SEAM effect was substantial and sustained for SEAM students in SEAM schools that had used SEAM as one of their strategies (i.e. issuing SEAM attendance notices). But SEAM was unlikely to have had an impact on reducing the rate of unauthorised absences for SEAM students in schools which were not actively participating in SEAM (i.e. no attendance notices were issued).⁴¹

5.56 In remote areas in Queensland, the PM&C report found that SEAM had an impact in reducing unauthorised absences. For SEAM students the rate of unauthorised absences reduced by 8.40 per cent in the first year and 5.31 per cent over the trial; for comparison students, the rate of unauthorised absences increased by 5.14 per cent in the first year, and 2.61 per cent over the trial.⁴²

5.57 As noted above, the suspension of income support payments to address unauthorised absences was a last resort. If parents did not take reasonable steps to ensure that their children attended school regularly, after all attempts were exhausted including consideration as to whether to grant a special circumstance exception or reasonable excuse, a decision would be made about suspension of income support payments.

5.58 The PM&C report noted that over the trial period, 119 parents (with respect to 162 children) in the NT had been suspended for failing to comply with the

39 PM&C report 67.

40 PM&C report 68.

41 PM&C report 69.

42 PM&C report 69.

attendance requirement of SEAM. In contrast, in Queensland only 3 parents (with respect to 6 children) had their payments suspended.⁴³

5.59 The PM&C report assessed the impact of income payment suspension on unauthorised absences for NT students.⁴⁴ The report's findings indicate that, generally, suspension did not have a lasting, positive effect on increasing school attendance:

...the pattern of unauthorised absences for selected referred students was highly variable during the suspension period, and three months before and after suspension. No clear trend was observed in the change of unauthorised absences in response to income support payment suspension for these students. For the most part, unauthorised absences were lowest during the suspension period.

In most cases, however, relapse was observed within three months after suspension, despite unauthorised absences being lower on average than they were prior to the suspension. The observed relapse suggests that the suspension was unlikely to lead to permanent improvements as affected families faced complex circumstances which may have thwarted their attempts to address attendance issues.⁴⁵

Overall effectiveness

5.60 Despite clear challenges facing SEAM, particularly in regards to enrolment across all sites, and attendance in the NT, the PM&C report indicated that SEAM was effective in focusing attention of parents on the importance of education.

5.61 The PM&C report noted that principals and staff from both NT and Queensland schools reported that families with chronic attendance problems responded to SEAM by 'making more effort to send their children to school'.⁴⁶ In Queensland in particular, 49 per cent of parents reported that the implementation of the trial had made them think about the importance of their child's schooling, with a further 29 per cent noting that it had encouraged them to make more effort to address their child's attendance issues.⁴⁷

5.62 However, the report also found that parents and communities generally had 'limited understanding of the details of SEAM, and in some cases, were confused about the aims of SEAM and their role in SEAM'.⁴⁸

43 PM&C report 91.

44 It is difficult to draw any broader conclusions from the Queensland sample group because of the low numbers of families who had their income support payments suspended.

45 PM&C report 92.

46 PM&C report 77.

47 PM&C report 35.

48 PM&C report 29.

5.63 On the basis of the ANAO and PM&C reports, SEAM does not appear to be an effective approach to addressing issues of low school enrolment and attendance. While SEAM may have led parents to reflect on the importance of schooling, it did not adequately address unauthorised absences in NT government schools, and had no lasting impact on attendance rates across private and public schools in the NT.

Proportionality

5.64 In assessing whether a measure is proportionate some of the relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the merits of an individual case, whether affected groups are particularly vulnerable, and whether there are other less restrictive ways to achieve the same aim.

5.65 The government maintains that SEAM is a reasonable and proportionate means of promoting the right to education. In 2012, the former minister for Indigenous Affairs explained that the 'qualifying condition is both reasonable and proportionate', since it is compulsory for school aged children to be enrolled and attend school; there are a number of steps before payment is suspended or cancelled, including the provision of social work assistance; and because there are appeal and review mechanisms in place.⁴⁹ The former minister continued:

The conditions imposed on parents in receipt of social security in designated SEAM areas are reasonable taking into account the importance of children attending school, the evidence that SEAM improves educational outcomes, the support made available through SEAM such as school conferences and social work support, and the protection and review rights that are in place under the Social Security Law.⁵⁰

5.66 The current minister agrees with his predecessor. The current minister maintains that the SEAM program has 'the flexibility to respond to circumstances outside a family's control', including granting an exemption to the suspension or cancellation of payments where social workers consider special circumstances exist, including for cases of domestic violence, serious illness or where a parent is unable to comprehend a notice about complying with SEAM. Further, a range of social security payments are available to families experiencing severe financial hardship.⁵¹

49 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

50 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

51 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3-4.

Insufficient flexibility

5.67 As was noted above at paragraph [5.8], a parent is only liable to have their income support payment suspended or cancelled if a child of theirs fails to meet the attendance benchmark. This benchmark requires that a child must attend at least 80 per cent of school days over a 10 week period. This benchmark is flexible in the sense that SEAM only addresses 'unauthorised' absences and 'reasonable' absences are not affected. Thus, a child may attend less than 80 per cent of school days over a 10 week period but not be affected by SEAM because some or all of their absences are 'reasonable'. This in-built flexibility offers scope for Indigenous children to attend cultural events.

5.68 Further, as noted above at paragraph [5.66], social workers may grant an exemption to the suspension or cancellation of payments where they consider special circumstances exist. This offers an additional avenue for the right to culture and social security to be protected. However, some problems exist with these approaches.

5.69 First, the PM&C report noted that the purpose and process of SEAM was poorly understood by in-scope parents. Indeed, the report noted that there was confusion among parents that SEAM was only meant to address 'unauthorised' absences and that 'reasonable' absences were not affected:

Examples of this included concerns of some parents that a sick child should be sent to school in case the parent is 'reported', and other parents were concerned about tensions arising between meeting their cultural obligations and complying with school attendance requirements.⁵²

5.70 In cases where the requirements of SEAM were not adequately explained, parents faced the impossible task of having to choose between exercising their right to culture or to enjoy their right to social security and right to an adequate standard of living.

5.71 Second, parents of children identified as not meeting attendance standards must attend a compulsory conference and agree upon a school attendance plan. The benchmark for improvement specified in attendance plans was that students attend school every day, unless an appropriate reason was provided. While this requirement reflects the compulsory nature of school attendance, the ANAO report noted concerns from social workers that in the context of very low attendance levels, this requirement 'could set parents up to "fail"'.⁵³ Further, the report noted that in some cases parents had been advised that 'reasonable' improvements in attendance would be sufficient to avoid income support cancellation. The mixed messages that some parents received would have placed them in a difficult position, and potentially have resulted in an unforeseen and unexpected suspension of payments.

52 PM&C report 32.

53 ANAO report 56.

5.72 Third, the attendance component of SEAM was implemented differently in the NT and Queensland over the trial period, with significant consequences for individuals concerned. The Queensland attendance referral model gave school principals discretionary powers to determine whether to refer a child/parent under SEAM, based on their understanding of the particular issues and their knowledge of the family situation.

5.73 Prior to July 2010, the NT attendance referral process was the same as in Queensland, that is, at the discretion of school principals. However, in contrast, after July 2010 the attendance referral process in the NT was changed to an automatic fortnightly referral process with a fixed benchmark. In limiting the discretion of school principals, the referral process operated with reduced flexibility, and meant that 'substantially more' SEAM parents in the NT had income support payments suspended,⁵⁴ limiting their right to social security,⁵⁴ and an adequate standard of living.

5.74 In a situation where parents were already uncertain of the requirements of SEAM, the absence of discretion would also clearly have affected the ability of Indigenous children and families to exercise their right to culture. In addition, as Indigenous people were more likely to live in NT trial sites, the automatic referral process engaged and limited the right to equality.

5.75 The PM&C report notes that the automatic referral process in the NT was intended to serve two goals: consistency in treatment;⁵⁵ and to stop repercussions against school staff in the community by ensuring that schools were not seen by families as responsible for any payment suspension.⁵⁶ While the committee agrees that these are worthy goals, it is likely that they could be achieved in a less rights restrictive manner. In particular, a more carefully calibrated and implemented process that explained how SEAM would operate would likely have contributed to this objective. Indeed, it appears that greater effort in explaining the operation of SEAM in the Queensland trial sites meant that an automatic referral process was not utilised.

5.76 Finally, while the committee acknowledges that social workers have the authority to exempt parents from income suspension where they consider special circumstances exist, the committee has long noted its concern with administrative and discretionary safeguards.

Vulnerability of particular groups

5.77 Although SEAM is not an Indigenous specific measure, both the ANAO and PM&C reports acknowledge that it has been introduced in areas with mainly

54 PM&C report 24.

55 PM&C report 47.

56 PM&C report 53.

Indigenous populations.⁵⁷ The PM&C report notes that 'nearly 90 per cent of SEAM parents in the NT were identified with Indigenous status and all of them resided in a remote or very remote community'.⁵⁸ In contrast, however, fewer than 20 per cent of SEAM parents in Queensland identified as Indigenous, and nearly 90 percent lived in a suburban community.⁵⁹

5.78 As was noted above at paragraphs [5.35] and [5.38], while poor school attendance is associated with Indigenous status, it is also associated with low socioeconomic status and remoteness. SEAM was designed to break the negative cycle of poor school attendance to poor education outcomes, welfare dependency and unemployment. As such, it is targeted at communities with a high prevalence of these factors, and in fact, the PM&C report noted that the selection of sites was 'appropriately targeted' to the problem of unauthorised absences.⁶⁰

5.79 Nevertheless, as discussed above at paragraphs [4.35] to [4.37], a measure can be indirectly discriminatory if though neutral on its face, it disproportionately affects people with a peculiar personal attribute, such as race.

5.80 The committee has already noted that the automatic referral process in the NT placed more significant pressures on Indigenous peoples, and led to substantially more individuals (who are likely to have been Indigenous) having their payments suspended. The committee acknowledges that this decision was taken to protect school staff from being blamed for payment suspensions, but questions why the approach was necessarily different from that at trial sites in Queensland, in which non-Indigenous peoples predominated. There is no discussion in the PM&C report, the ANAO report, or any statement by the Minister for Indigenous Affairs, as to why the approach taken in Queensland could not have been followed in the NT.

5.81 It appears that the major reason for the change to an automatic referral process in the NT was due to the inadequate implementation of SEAM in these sites, which left parents, communities and schools uncertain of SEAM's requirements. The PM&C report notes many parents in the NT thought that SEAM was 'directed only at Indigenous children in remote areas'.⁶¹

5.82 Greater effort in educating NT communities about SEAM and its requirements, including for example that: SEAM was not focused on Indigenous communities; attending cultural obligations would not adversely affect a person's income support payments; and school staff were not responsible for the possible suspension of payments, would have gone some way to achieving the objective sought without removing any discretion.

57 PM&C report 7 and 2. ANAO report 14.

58 PM&C report 21.

59 PM&C report 21.

60 PM&C report 11.

61 PM&C report 29.

Less restrictive ways to achieve the same aim

5.83 Another important factor in assessing the proportionality of a measure is whether there are less rights restrictive ways to achieve the same objective. Many submissions to this inquiry considered that the suspension or cancellation of income support payments as a result of failing to improve school enrolment or attendance is 'punitive' and limits a number of human rights.⁶²

5.84 However, research indicates that sanctions are particularly effective in ensuring compliance with regulatory or legislative aims. The PM&C report quoted from a 2009 report by Access Economics entitled 'School Attendance Project'. This report identified four key elements for a successful program aimed to improve school attendance:

Successful programmes appear to have four elements: ongoing tracking (data requirements); rapid response time (effective process); education of parents and students on the importance of school attendance (parental and student attitude); application of sanctions when all else has failed and follow-up support to students where sanctions have been applied (punitive measure and support).⁶³

5.85 Significantly, the ANAO report and the PM&C report indicate that the threat of sanctions was the most effective element in improving school attendance. The PM&C report noted that 'results from both the quantitative and qualitative analysis confirmed that the SEAM effect on reducing unauthorised absences was largely attributed to the threat effect under SEAM'.⁶⁴ The report noted further that:

...knowledge of a suspension occurring in the community seemed to have an effect on other families in complying with their requirements for school attendance. But when suspensions did not occur at the time they were needed, then the threat effect arising from SEAM diminished, as it was seen as not being backed up by action.⁶⁵

5.86 The ANAO report noted that those implementing the program recognised sanctions as particularly effective:

In discussions with the ANAO, Department of Human Service and Northern Territory Department of Education staff in the Northern Territory emphasised that SEAM needed to be swiftly and consistently applied to ensure that the threat of payment suspension is sustained over time, as this could drive longer-term behavioural change in school attendance.⁶⁶

62 Aboriginal Peak Organisations Northern Territory, Submission 22, 13; National Welfare Rights Network, Submission 14, 14; NAAJA, Submission 20, 19.

63 PM&C report 46.

64 PM&C report 49, 76-78.

65 PM&C report 94.

66 ANAO report 51.

5.87 These findings accord with research by Moshe Justman and Kyle Peyton from the Melbourne Institute of Applied Economic and Social Research. In analysing SEAM's effect on NAPLAN test results, Justman and Peyton demonstrate that 'a credible threat to link welfare payments to school attendance can substantially raise participation rates and learning achievement'.⁶⁷

5.88 Nevertheless, notwithstanding the fact that sanctions are effective in ensuring compliance, evidence suggests that there are other less rights restrictive ways to promote school enrolment and attendance. These less rights restrictive measures begin by identifying the causal barriers that prevent Indigenous Australians from enrolling or attending school in the first place.

5.89 Many submitters identified significant barriers to enrolment and regular attendance affecting Indigenous Australians. For example, the National Welfare Rights Network explained that there are 'a broad range of complex factors that lead to low school attendance', which SEAM does not appear tailored to effectively deal with. These factors include: inadequate housing and health care; mental health issues; family violence; overcrowding; and generational unemployment.⁶⁸

5.90 The North Australian Aboriginal Justice Agency identified these and additional factors, including:

- lack of relevance to Indigenous needs, culture, and experience;
- failure to involve parents and communities in their children's education;
- inadequate number of teachers with appropriate cultural knowledge and skills, and lack of facilities available in remote areas;
- bullying; and
- lack of transportation.⁶⁹

5.91 The ANAO report also noted that a range of barriers exist that must be identified before an effective measure to improve school enrolment and attendance is developed. The ANAO report explained that these barriers to regular attendance are 'varied, often complex and at times deeply entrenched',⁷⁰ and identified common barriers to school attendance encountered under SEAM:

67 Moshe Justman and Kyle Peyton, 'Enforcing Compulsory Schooling by Linking Welfare Payments to School Attendance: Lessons from Australia's Northern Territory' (University of Melbourne, Melbourne Institute Working Paper Series, Working Paper No. 19/14) 4.

68 National Welfare Rights Network, Submission 14, 13-14.

69 NAAJA, Submission 20, 22, citing the Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian Students' (September 2010) and Larissa Behrendt and Ruth McCausland, Jumbunna House of Learning, University of Technology Sydney, 'Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education' (August 2008) 27.

70 ANAO report 61.

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- parental authority and/or parenting skills;
 - transportation issues;
 - bullying and teasing;
 - factors associated with significant overnight disturbance which affected sleeping patterns and caused children and/or parents to sleep in and miss school including:
 - overcrowded housing;
 - domestic violence;
 - alcohol and substance abuse; and
 - gambling.⁷¹

5.92 There is evidence to suggest that these barriers are causally related to poor school outcomes. For example, the Menzies Centre for Child Development and Education has found a strong correlation between overcrowding in housing and school attendance. Their research indicates that measures that address overcrowding are likely to be successful in improving school attendance.⁷²

5.93 In its submission to this inquiry, UnitingJustice Australia identified an alternative measure that may also improve school enrolment and attendance: own-language instruction. UnitingJustice Australia explained:

It is vitally important for children to learn in their first language. For Aboriginal and Torres Strait Islander children in Australia, this means that education in their mother tongue has seen better educational results later in life. In the Northern Territory, the language used at school is rarely the language spoken at home, making educational advances difficult. The World Bank found that, in relation to educating children in their own language; children learn better, they stay in school longer, they reach higher levels of education, and increase their social mobility. First language teaching has been linked to higher levels of literacy, reduced drop-out rates, and increased adult literacy levels.⁷³

5.94 The New South Wales government has also identified own language instruction has leading to improved school attendance rates:

71 ANAO report 55.

72 Sven Silburn et al, 'Unpacking Educational Inequality in the Northern Territory' (2014) *ACER Research Conference 2014*, 92-97.

73 UnitingJustice Australia, Submission 15, 10; citing Charles Grimes, *Indigenous Languages in education: What the research actually shows*, Australian Society for Indigenous Languages (2009); World Bank, 'In their own language...education for all' (2005).

Reclaiming and maintaining Aboriginal language and culture is imperative, as it instils a greater sense of identity, pride and confidence in people and leads to increased school attendance and participation.⁷⁴

5.95 SEAM does not address these broader issues relating to unauthorised absences but focuses primarily on the action of children—that is, whether a child improves his or her attendance. In doing so, SEAM runs the risk of ignoring significant reasons for truancy, substantially limiting its effectiveness. Indeed, the PM&C report noted that families who had their income-support payments suspended:

...were likely to have faced complex barriers which had been entrenched for a long period. Therefore, any impact from a suspension tended to be sustained for a short period.⁷⁵

5.96 This is a critical finding, indicating that social support is integral to SEAM's effectiveness. This is the case because only the provision of social work under SEAM has the potential to identify and overcome broader barriers to school enrolment and attendance and ensure that these gains are sustainable over a long period.

5.97 The PM&C report noted that Department of Human Services social workers and education authorities involved in the SEAM trial considered the social work contact provided under SEAM as 'critical and intensive'.⁷⁶ As noted above at paragraph [5.51], the report found that unauthorised absences were more likely to be reduced 'when a high level of social work support was provided'.⁷⁷

5.98 However two problems persist. First, despite the importance placed on social work contact, the ANAO report noted that social workers were often unable to attend to all relevant families. The ANAO report noted that during 2013:

...an estimated 1300 children of in-scope parents were identified as having low school attendance, and as such, should have been afforded attention under the attendance element. However, SEAM was applied inconsistently or narrowly in 2013; with only one quarter of these children (331) being the subject of a compulsory conference.⁷⁸

5.99 Therefore, despite the recognised value of social work support it appears that a lower emphasis was placed on ensuring that that support was provided for

74 Victor Dominello, NSW Minister for Aboriginal Affairs, Media release (20 July 2011) *NSW Government Announces Funding for Aboriginal language Centre*.

75 PM&C report 93.

76 PM&C report 79. The PM&C report also noted that SEAM was particularly effective in increasing engagement between social workers and families: 'It was noted by interviewed social workers that the DHS social work contact provided under SEAM resulted in increased engagement by families who would normally avoid contact with services or may not come to the attention of social workers'. It seems that for many of these families, SEAM acted as a trigger for social work contact.

77 PM&C report 81.

78 ANAO report 62.

relevant individuals. A revamped SEAM that focused holistically on social work support rather than punitively on sanctions may be more likely to achieve lasting beneficial results.

5.100 Second, and more significantly, social work support can only address issues on the family side of the equation; it cannot (for example) ensure that the school curriculum is relevant to Indigenous needs, culture and experience. SEAM makes no effort to identify or address barriers to school enrolment and attendance on this side of the equation, focusing instead on punishing parents and families for the unauthorised absences of their child. A revamped SEAM that focused on all entrenched barriers to enrolment and attendance, rather than a subset of them, would be most likely to achieve lasting beneficial results.

Committee views

5.101 Low levels of school enrolment and attendance is a major problem in parts of the NT and this contributes to poor education outcomes, as well as an increased likelihood of welfare dependency and unemployment. Accordingly a measure designed to break this debilitating cycle, and improve school enrolment and attendance, will contribute to the enjoyment of a number of human rights including most clearly the right to education.

5.102 Indeed, the committee repeats its views from its 2013 report, where it noted that the 'reduction of low school attendance rates, particularly in Aboriginal communities in the NT is an important and pressing objective and that Australia is under an obligation to ensure that all children effectively enjoy the right to a quality education'.⁷⁹

5.103 However, SEAM also limits a number of human rights, in particular the right to equality and non-discrimination, the right to social security, an adequate standard of living and privacy, and the right to culture. These limitations must be justified as a rational, reasonable and proportionate measure adopted in pursuit of a legitimate objective. The government bears the onus of clearly demonstrating that the measure is justified. In this case, the committee expects a clear demonstration, based on reliable empirical evidence, that the measures are having a significant impact on reducing low school attendance.

5.104 Since the committee's 2013 report, two evaluations of SEAM have been conducted. Unfortunately they find that the effectiveness of SEAM in stimulating an increase in enrolment or attendance levels 'is not readily identifiable'.⁸⁰ These reports suggest that any improvement has been mixed and has not had any lasting impact.

79 2013 report, 74.

80 ANAO report 66-67.

5.105 In a submission to the Senate Community Affairs Legislation Committee's 2012 inquiry into the Stronger Futures bill, the Australian Human Rights Commission noted that the question of school attendance is a complex issue and the problem of low school attendance needed to be approached holistically.⁸¹ The ANAO and PM&C reports demonstrate that this remains true today. A punitive approach that focuses primarily on the action of children ignores broader reasons for unauthorised absences. Ignoring these broader reasons means that the problem of unauthorised school absences cannot be effectively targeted.

5.106 Even if evidence indicated that SEAM was effective in improving school enrolment and attendance, questions would remain over its impact on fundamental human rights. A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate

5.107 SEAM has adopted a punitive approach that sanctioned parents for the unauthorised school absences of a child and has operated with less flexibility for vulnerable communities in the NT compared to Queensland. Evidence from the ANAO and PM&C reports indicates that the provision of social work is integral in overcoming barriers to school enrolment and attendance and in ensuring that any improvement is sustainable in the long-term.

5.108 The committee considers that it is vitally important that school enrolment and attendance be markedly improved across the NT. However, on the basis of the evidence before it, the committee considers that there are real doubts as to whether SEAM is effective, and thereby rationally connected to this objective. Even assuming a rational connection, the committee considers that SEAM is not proportional to the objective of improving school enrolment and attendance. A human rights compliant approach to this problem requires that any measures must be effective, flexible to take into account individual circumstances, calibrated carefully to protect vulnerable groups and targeted at dealing with the causes of unauthorised absences rather than punishing the symptoms. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 6

- **The committee recommends that SEAM be redesigned to focus on identifying and overcoming complex barriers to school engagement within regional and remote communities. To do this, the provision of social work support should be enhanced.**

81 Australian Human Rights Commission, Stronger Futures in the Northern Territory Bill 2011 and two related Bills, *Submission to the Senate Community Affairs Legislation Committee* (6 February 2012) paragraphs [185] to [190].

Recommendation 7

- **The committee highlights that sanctions are a legitimate and effective mechanism to encourage families to assist their children to attend school. The committee recommends that sanctions regimes must differentiate between voluntary disengagement and non-attendance resulting from causes or factors outside the child or family's control. This likely requires the consideration of a social worker.**

The Hon Philip Ruddock MP
Chair

